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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - -	x	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	x	

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT WITH RESPECT TO CLAIM OF WEIDLER
 SETTLEMENT CLASS SUBJECT TO DEBTORS' FIFTY-EIGHTH
 OMNIBUS OBJECTION TO CLAIMS (MODIFICATION AND/OR
 RECLASSIFICATION OF CERTAIN CLAIMS)

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INTRODUCTION

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") submit this memorandum of law in support of their motion, under Rules 3007, 7056, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 56 of the Federal Rules of Civil Procedure (the "Civil Rules"), for summary judgment (the "Summary Judgment Motion") on the Fifty-Eighth Omnibus Objection (the "Objection") with respect to the class proof of claim -- Claim 11271 (the "Weidler Claim") -- filed by certain class action plaintiffs (the "Settlement Class").

STATEMENT OF UNDISPUTED MATERIAL FACTS

The following material facts are not in dispute.

On April 4, 2007, Daniel Weidler and others (the "Plaintiffs") filed a class action complaint on behalf of themselves and other former employees against Circuit City Stores, Inc. ("CCSI") in Los Angeles County Superior Court, Case No. BC369001, styled Daniel E. Weidler, Michael F. Yezback, and Eloise Garcia v. Circuit City Stores, Inc. (the "Class Action Litigation"), which complaint was amended on September 4, 2007 (the "First Amended Complaint"). See Joint Stipulation of Settlement Agreement

and Release of Class Action Claims (the "Settlement Agreement") ¶ 1. A true and correct copy of the Settlement Agreement is attached as Exhibit A.

In the First Amended Complaint, the Plaintiffs alleged that they and other similarly situated former employees of CCSI were entitled to recover, among other things, "general and compensatory damages, including wages, punitive damages, interest, attorneys' fees, and costs under California Government Code section 12940 *et seq.*" Id. In addition, the First Amended Complaint also included "a cause of action for wrongful discharge" Id.

In September 2008, the Plaintiffs and CCSI reached a settlement, which was documented in the form of the Settlement Agreement. Pursuant to the Settlement Agreement, CCSI and the Plaintiffs stipulated to the creation and certification of a class (the "Settlement Class"), which Settlement Class was defined as:

All persons who were employed by Circuit City [Stores, Inc.] in California and who were at least forty (40) years of age as of March 28, 2007, and whose employment with Circuit City [Stores, Inc.] was terminated on or about March 28, 2007 or shortly thereafter in relation to their wage rates.

Id. ¶¶ 5-7.

In addition to stipulating to the formation of the Settlement Class, CCSI agreed to pay the members of the Settlement Class a maximum amount of \$15 million dollars, less attorney's fees of \$3,750,000 and administrative costs of \$50,000, or a net maximum payment of approximately \$11,200,000. Id. at ¶¶ 13-21 (the "Settlement Payment"). Pursuant to the Settlement Agreement, each member of the Settlement Class (each a "Class Member" and collectively the "Class Members") was entitled to receive a share of the Settlement Payment, which share was "based on the number of years of service prior to termination in or about March of 2007." Id. at ¶ 20(d). Moreover, "[f]or tax purposes the Parties agree[d] to allocate 25% of any amounts paid to Class Members as wages, and 75% to non-wages, reportable on IRS Form 1099, as required", id. at ¶¶ 19 and 23(a), and each Class Member was to receive an IRS Form W-2 "for his or her portion of the amount treated as wages." Id. ¶ 23(a).

On or about September 25, 2008, the Los Angeles County Superior Court entered an Order Granting Preliminary Approval of Class Action Settlement, Provisional Certification of Class for Settlement Purposes, Approval of Notice, and Setting of Final Fairness Hearing ("the

Preliminary Approval Order") and set a hearing for December 12, 2008 to consider final approval of the Settlement Agreement. See Preliminary Approval Order ¶¶ 7, 12. A true and correct copy of the Preliminary Approval Order is attached hereto as Exhibit B.

On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code. On December 3, 2008, this Court entered a Stipulation and Order Granting Motion for Relief from Stay permitting the settlement approval process to be completed in the Class Action Litigation (Docket No. 648). On or about December 12, 2008, the Los Angeles County Superior Court held a hearing to consider final approval of the Settlement Agreement. On the same day, it entered an Order Granting Final Approval of Class Action Settlement and Final Judgment in the Class Action Litigation (the "Approval Order"). See Approval Order ¶ 2. A true and correct copy of the Approval Order is attached as Exhibit C.

Thereafter, on January 28, 2009, counsel to the Settlement Class filed a proof of claim (Claim No. 7528) based on the Settlement Agreement (the "Initial Claim") and the Settlement Class's right to receive the Settlement Payment. The Initial Claim was asserted in the aggregate

amount of \$14,369,903.70 and consisted of: (i) a pre-petition unsecured, non-priority claim in the amount of \$8,363,203.70 and (ii) a pre-petition, unsecured priority claim in the amount of \$6,005,700. On February 6, 2009, the Settlement Class filed an amended proof of claim -- Claim No. 11271 -- requesting the same amounts (the "Weidler Claim"). The Weidler Claim consisted of three parts: (i) a pre-petition unsecured, non-priority claim in the amount of \$8,363,203.70 (the "Nonpriority Claim"); (ii) a pre-petition claim in the amount of \$2,255,700 asserted as being entitled to priority as wage claim under section 507(a)(4) (the "Alleged Wage Claim"); and (iii) a claim in the amount \$3,750,000 for attorneys' fees asserted as being entitled to priority under Bankruptcy Code sections 105, 503, 507, or other applicable sections (the "Attorneys Fee Claim"). See Weidler Claim.¹

On October 21, 2009, the Debtors filed their Fifty-Eighth Omnibus Objection to Claims (the "Objection") (Docket No. 5322), seeking to reclassify the Alleged Wage Claim and the Attorneys Fee Claim to pre-petition general

¹ The Initial Claim was subsequently disallowed by the Court's Order dated September 14, 2009 which granted the Debtors' Twenty-Eighth Omnibus Objection to Claims (Docket No. 4848) to, among other things, amended and superseded claims.

unsecured, non-priority claims. On November 16, 2009, the Settlement Class responded to the Objection (the "Weidler Response") (Docket No. 5753), arguing that the Alleged Wage Claim is entitled to section 507(a)(4) priority. Weidler Response ¶ 14 n. 3.²

SUMMARY OF ARGUMENT

The Settlement Class disputes the Debtors' contention that no part of the Weidler Claim, including the Alleged Wage Claim, is entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code ("section 507(a)(4)"). In support, the Settlement Class contends that the Alleged Wage Claim is entitled to priority under section 507(a)(4) because it is a claim for "wages" earned within 180 days prior to the Petition Date (the "Priority Period").

As demonstrated below, the Alleged Wage Claim is, as a matter of law, a pre-petition general unsecured, non-priority claim for three reasons. First, even assuming

² The Weidler Response does not appear to contest the Debtors' request to reclassify the Attorneys Fee Claim to an unsecured, non-priority claim. Nor could it, as there is no basis in section 503 or 507 for asserting that the Attorneys Fee Claim is entitled to priority. To the extent, however, that the Settlement Class contends otherwise, the Debtors reserve their right to brief the issue in any reply they file.

that the Alleged Wage Claim was a claim for "wages", which it is not, those "wages" were not "earned" within the Priority Period, as required by section 507(a)(4). Second, the Alleged Wage Claim is simply not a claim for "wages". The claim is based on the Settlement Agreement, not a claim by an employee for wages "earned" by the Class Members. Third, the Settlement Class' contention that the Alleged Wage Claim may, in the alternative, be characterized as "back pay" that accrued, at least in part, during the Priority Period is without any legal or factual foundation.

Accordingly, the Summary Judgment Motion should be granted, and the entire Weidler Claim, including the Alleged Wage Claim, should be classified as a pre-petition general unsecured, non-priority claim.

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT.

Pursuant to section 502(a), a party in interest, including the debtor, may object to claims. See 11 U.S.C. § 502(a). Bankruptcy Rule 3007(a) provides that an objection must be in writing and filed with the Court. Fed. R. Bankr. P. 3007(a).

Claim objections are contested matters pursuant to Bankruptcy Rule 9014. In re IBIS Corp., 272 B.R. 883,

893 (Bankr. E.D. Va. 2001) ("Objections to proofs of claims are contested matters governed by Fed. R. Bankr. P. 9014."). Therefore, Bankruptcy Rule 7056, which incorporates Civil Rule 56, applies. See Fed. R. Bankr. P. 9014(c). Moreover, as the United States Supreme Court has held, summary judgment is not a disfavored procedural shortcut, but rather an integral part of the Civil Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." Sibley v. Lutheran Hosp. of Md., Inc., 871 F.2d 479, 483 n.9 (4th Cir. 1989) (citing Celotex, 477 U.S. at 327).

Pursuant to Civil Rule 56(b), "[a] party against whom relief is sought may move at any time, with or without supportive affidavits, for summary judgment on all or part of the claim." Fed. R. Civ. P. 56(b). Moreover, "[s]ummary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." In re US Airways, Inc., No. 1:06CV539, 2006 WL 2992495, at *4 (E.D. Va. 2006) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1985)). In this regard, a court may properly grant summary judgment when:

Although each side in its submissions has presented a different characterization of the facts . . . and has argued different conclusions which the court should draw from those facts, there is little dispute as to actual facts and no dispute of material facts relevant to the determination of the causes of action.

In re Conn. Pizza, Inc., 193 B.R. 217, 220 (Bankr. D. Md. 1996); see also Goodman v. Resolution Trust Corp., 7 F.3d 1123, 1124 (4th Cir. 1993) (finding that summary judgment is appropriately granted where there are "no relevant disputes of material fact" (emphasis added)).

As demonstrated below, no genuine issue as to any relevant or material fact exists, and summary judgment should be granted to the Debtors.

II. THE COURT SHOULD RECLASSIFY THE WEIDLER CLAIM AS A GENERAL UNSECURED, NON-PRIORITY CLAIM AS A MATTER OF LAW.

The Settlement Class asserts that the Alleged Wage Claim is entitled to priority under section 507(a)(4) because that Claim constitutes "unpaid wages" earned within the Priority Period. See Weidler Response ¶ 20. In support, the Settlement Class states that in the Settlement Agreement, Circuit City Stores agreed to pay the Settlement Class "no less than \$2,800,000 in wages." Id. Moreover, the Settlement Class alleges that these "wages" were "earned" on the date of execution of the Settlement

Agreement, which date was within the Priority Period. Id. Consequently, the Settlement Class contends that the Alleged Wage Claim is entitled to priority treatment under section 507(a)(4).

The Settlement Class also argues, in the alternative, that if the entire \$2,255,700 amount is not determined to be entitled to priority, the Court should hold a hearing to determine how much of these "wages" constituted "back pay" that accrued during the Priority Period. See Weidler Response ¶ 22.

As demonstrated below, both of the Settlement Class' alternative arguments fail as a matter of law.

A. The Settlement Class Has Failed To Meet Its Burden To Establish That The Alleged Wage Claim Is Entitled To Section 507(A)(4) Priority.

Section 507(a)(4) states, in relevant part, that priority will be granted to:

[a]llowed unsecured claims, but only to the extent of \$10,950 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; . . .

11 U.S.C. § 507(a)(4).³ Thus, section 507(a)(4) expressly provides that a claim is only entitled to priority treatment if it is a claim for "wages" that were "earned" within the Priority Period. Moreover, it is the Settlement Class' burden to demonstrate that the Alleged Wage Claim satisfies this standard. See, e.g., In re Kitty Hawk, Inc., Case No. 00-42141-BJH-11, 2002 Bankr. LEXIS 1996, *7 (Bankr. N.D. Tex. Nov. 26, 2002) ("The claimant asserting wage priority bears the burden of establishing the priority claim and must fit squarely within the statutory requirements to achieve priority status.").

Importantly, this section must be narrowly construed because, due to the "equal distribution objective underlying the Bankruptcy Code[,] "provisions allowing preferences must be tightly construed." Howard Delivery Service, Inc. v. Zurich American Insurance Co., 547 U.S. 651, 668-69 (2006) (applying this principle in narrowly

³ The current section 507(a)(4) was "renumbered from section 507(a)(3) to section 507(a)(4) by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 212 (2005), effective in cases commenced on or after October 17, 2005." Collier on Bankruptcy, 15th ed. Revised 2009, ¶ 507.05, n. 1. Accordingly, all references to section 507(a)(3) in this memorandum should be construed as referring to the current section 507(a)(4). It should also be noted that prior versions of this provision had a shorter (90 day) priority period. As a result, some cases cited in this memorandum may apply the 90 day period, which has since been amended to 180 days.

construing Bankruptcy Code section 507(a)(5)); see Ford Motor Credit v. Dobbins, 35 F.3d 860, 866 (4th Cir. 1994) ("The presumption in bankruptcy cases is that the debtor's limited resources will be equally distributed among the creditors" and therefore "statutory priorities must be narrowly construed"); see also In re Lull Corp., 162 B.R. 234, 239 (Bankr. D. Minn. 1993) (noting, in the context of applying section 507(a)(3) wage priority, that "[p]riority statutes are generally narrowly construed"). Thus, notwithstanding the fact that "wage priority statutes are to be liberally construed . . . a rule of liberal construction does not allow a court to disregard the plain language of the statute." Davidson Transfer & Storage Co. v. Teamsters Pension Trust Fund, 817 F.2d 1121, 1124 (4th Cir. 1987); see In re Pittston Stevedoring Corp., 40 B.R. 424, 428 (Bankr. S.D.N.Y. 1984) (noting that "even a canon of construction favoring a broad interpretation does not militate in favor of so wide an interpretation as to render explicit provisions of the Code meaningless" and stating that "there is long-standing authority for the proposition that words of a statute should be afforded their plain narrow meaning, especially in the area of wage priorities.").

As demonstrated below, the Settlement Class has not, and cannot, carry its burden of establishing that the Alleged Wage Claim is actually for "wages" that were "earned" in the Priority Period. Therefore, the Alleged Wage Claim is not entitled to section 507(a)(4) priority.

1. Even if the Alleged Wage Claim is a claim for wages, those wages were not "earned" within the Priority Period.

Even assuming, arguendo, that the Alleged Wage Claim is a claim for "wages," but see infra Section II.A.2, the Alleged Wage Claim would still not qualify for priority treatment under section 507(a)(4) because those "wages" were not "earned" within the Priority Period.

An "employee earns wages within the meaning of Code § 507(a)(4) at the time that the services are performed, rather than at the time that the right to payment vests." Norton Bankruptcy Law and Practice, 3rd ed. 2010, § 49:44 (emphasis added); see also In re Northwest Engineering Co., 863 F.2d 1313, 1314-17 (7th Cir. 1988) (separating the work requirement from the vesting requirement and concluding that "the employee gets a priority equal to the value of services rendered in the 90 days before bankruptcy"); In re Myer, 197 B.R. 875, 877 (Bankr. W.D. Mo. 1996) (noting that "[p]riority status is

available only for actual services performed and commissions earned" and that "analysis of when § 507(a)(3) priority arises focuses on the time the individual performed the services giving rise to the right to the commissions"); In re Cardinal Industries, 160 B.R. 83, 85 (Bankr. S.D. Ohio 1993) ("[T]he timing of the payment on account of an earned bonus or commission should not be the focus of the analysis under 11 U.S.C. § 507(a)(3)(A). Rather, the focus should be upon the time the individual performed the services which gave rise to the right to the bonus or commission. 'Earned' for purposes of priority, therefore, may not always be synonymous with 'payable'.").⁴

As the Settlement Agreement makes clear, the Class Members did not provide any services to Debtors within the Priority Period. As set forth above, the Settlement Class is defined as:

⁴ See also In re T & B.C. Coal Mining, Case No. 90-70714, 1993 Bankr. LEXIS 2315, *4 (Bankr. E.D. Ky. 1993) (citing cases under the Bankruptcy Act for the proposition that "wages are 'earned' when the work is performed"); In re Ionosphere Clubs, 154 B.R. 623, 626 (Bankr. S.D.N.Y. 1993) (approving of bankruptcy judge's holding that "only vacation pay earned for work actually performed within the 90-day period qualified for inclusion as a third priority claim"); Pittston, 40 B.R. at 426-27 (rejecting claimant's argument that wages were earned "when discovered during the audit of the debtor's books [during the priority period]", finding instead that the wages must actually have been "earned" during the priority period); In re Lynnwear Corp., 28 B.R. 532, 534 (Bankr. S.D.N.Y. 1983) (noting that "priority is only available for actual services performed").

All persons who were employed by Circuit City [Stores, Inc.] in California and who were at least forty (40) years of age as of March 28, 2007, and whose employment with Circuit City [Stores, Inc.] was terminated on or about March 28, 2007 or shortly thereafter in relation to their wage rates.

Settlement Agreement ¶¶ 5-7. Therefore, any services performed by a Class Member for the Debtors was last performed in or about March 2007 and, thus, well before the commencement of the Priority Period.

Moreover, as the Settlement Agreement also makes clear, the amount of the Settlement Payment payable to any individual member of the Settlement Class was based entirely on that individual member's length of service to CCSI before he or she was terminated in or about March 2007. See Settlement Agreement ¶ 20(d) (providing that "[t]he Maximum Class Payment will be divided among the Class Members by a formula based on the number of years of service prior to termination in or about March 2007"). Consequently, to the extent the Settlement Payment may be characterized as "wages", the service for such wages were rendered outside the Priority Period.

Nor does, or can, the Settlement Class contend otherwise. Indeed, the Settlement Class concedes as much in the Weidler response. See Weidler Response ¶ 2 ("The

Debtor terminated Plaintiffs' employment in early 2007 . . ."). Therefore, even if the Alleged Wage Claim constituted a claim for "wages", which it does not, the "wages" were "earned" well before the Priority Period. Consequently, the Alleged Wage Claim is not entitled to priority under section 507(a)(4).

Notwithstanding the above, the Settlement Class argues that the Alleged Wage Claim is entitled to section 507(a)(4) priority because it was "earned" when the parties entered into the Settlement Agreement, which occurred during the Priority Period. See Weidler Response ¶ 20. In support of this position, the Settlement Class cites In re Crouthamel Potato Chip Co., 52 B.R. 960, 965 (E.D. Pa. 1985), rev'd on other grounds, 786 F.2d 141 (3rd Cir. 1986), for the proposition that wages are earned "when, as a matter of contract, the employees' right to receive those funds are fixed and could not be taken from him by the occurrence of some contingent event." This argument fails on a number of grounds and the Class Members' reliance on Crouthamel is misplaced.

First, by changing the focus to the date on parties entered into the Settlement Agreement as opposed to the dates on which the Class Members provided services to

the Debtors, the Settlement Class is seeking not a claim for wages, but a contractual claim for the amount of the Settlement Payment. As demonstrated below, that is not a claim for wages at all, and thus, not entitled to priority under section 507(a)(4). See *infra* Section II.A.2.

Second, as courts have made clear, wages are "earned" when the services are performed, not when they become payable. See, e.g., In re Cardinal Industries, 160 B.R. at 85 ("the focus should be upon the time the individual performed the services which gave rise to the right" to payment); In re T & B.C. Coal Mining, 1993 Bankr. LEXIS 2315 at *4 ("wages are 'earned' when the work is performed"). Indeed, at least one court has expressly rejected the argument made by the Settlement Class based on Crouthamel case.

In particular, in T & B.C. Coal Mining, the claimant argued that its claim, based on a judgment for unpaid wages due on account of services provided before the priority period, was entitled to priority because it was "fixed" within the priority period when the judgment was entered within such period. See 1993 Bankr. LEXIS 2315 at *3. In support, the claimant cited Crouthamel for the proposition that "[i]f the wages were due and payable

within the 90 day period, they were 'earned' during that period" because the requirement that wages be "earned" "does not necessarily mean that the work done by the individual to earn the unpaid wages had to be performed within the 90 day period." Id. The bankruptcy court expressly rejected this argument, concluding instead that the cases relied upon by Crouthamel actually stood for the proposition that "wages are 'earned' when the work is performed." Id. at *5 (citing In re Ad Service Engraving Co., 338 F.2d 41, 43 (6th Cir. 1964); U.S. v. Munro-Van Helms Co., 243 F.2d 10, 13 (5th Cir. 1957)). As set forth above, the Class Members performed no work for the Debtors during the Priority Period so no "wages" could have been "earned" during that period.

Third, Crouthamel is distinguishable. In Crouthamel, the employee's union argued that union employees had a priority wage claim for holiday pay because, under its collective bargaining agreement with the debtor, holiday pay was "earned" when the employees were laid off within 45 days prior to the holiday, which layoff had occurred within the priority period. Crouthamel, 52 B.R. at 963-65. The court found, however, that the agreement not only required the employees to have been laid off

within 45 days prior to the holiday, but also required the employees to remain laid off on the date of the holiday, which holiday was after the petition date. Id. at 965. Therefore, the court concluded that the payment had not been earned or fixed under the collective bargaining agreement within the priority period; rather, it would become earned or fixed on the post-petition date of the holiday, when the determination as to whether the employees remained laid off could be made. Id.

In the present case, however, the Settlement Class is not relying on an employment contract that governs the payment of wages qua wages for services. It is relying on the Settlement Agreement that is a contract governing the resolution of litigation, not the employment relationship and when wages are earned. Nor is the Settlement Class requesting payment of wages that would be earned pursuant to the terms of a policy or contract as opposed to simply for services rendered on a particular date. Indeed, unlike the collective bargaining agreement in Crouthamel, the Settlement Agreement here does not specify when any wages are earned. Rather, it simply states that some of the Settlement Payment would be treated as "wages" for tax purposes.

Therefore, to the extent the court is called upon to determine when the wages, if any, were earned, such wages were earned when the services were provided. This occurred well before the Priority Period. Thus, Crouthamel is plainly distinguishable and its conclusion as to when holiday pay would be earned under a collective bargaining agreement has no application as to when ordinary wages are earned when no employment or other agreement alters the general principle that wages are earned when services are rendered.

Accordingly, the Settlement Class' position should be rejected, and the Alleged Wage Claim fails to qualify for section 507(a)(4) priority treatment because it was not "earned" within the Priority Period.

2. The Alleged Wage Claim may not properly be characterized as a claim for "wages".

As shown above, even assuming the payment required by the Settlement Agreement constituted "wages", those "wages" were not earned during the Priority Period. Thus, the Alleged Wage Claim is not entitled to priority treatment under section 507(a)(4). Additionally, as demonstrated below, no part of the Settlement Payment was to be the payment of "wages" as that term is used in

section 507(a)(4) and, therefore, the Alleged Wage Claim is not entitled to priority treatment under section 507(a)(4) on this ground as well.

The Bankruptcy Code does not contain a definition of "wages." As a result, "[t]he proper place to begin in interpreting language of the Bankruptcy Code is with the plain meaning of the words at issue." In re Sholdra, 270 B.R. 64 (Bankr. N.D. Tex. 2001). Additionally, although "wages" is used in federal statute, some courts have determined that "the meaning of wages may be decided by reference to state law." In re Kasson, Inc., 109 B.R. 352, 355 (Bankr. E.D. Wisc. 1989) ("the meaning of wages may be decided by reference to state law"). In the present case, this Court's reliance on either results in the same conclusion -- the Settlement Payment is not the payment of "wages" as that term is used in section 507(a)(4).

First, Black's Law Dictionary defines "wages" as:

Payment for labor or services, [usually] based on time worked or quantity produced; [specifically] compensation of an employee based on time worked or output of production. Wages include every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, bonuses, and the reasonable value of board, lodging, payments in kind, tips, and any similar advantage received from the employer.

Black's Law Dictionary 1716 (9th ed. 2009); see also Sholdra, 270 B.R. at 69 (using the Black's Law Dictionary definition of "wages" in the context of defining "earnings" under section 541(a)(6), noting that the term "wages" was used by Congress in other provisions of the Code, including section 507(a)(3)). The Weidler Claim, however, seeks a payment due under the Settlement Agreement that is to be given in full satisfaction, settlement and release of pre-petition litigation. Therefore, at bottom, the Weidler Claim is based on a contract -- the Settlement Agreement -- not on an employee rendering services to the Debtors during the Priority Period.

Nor would the Settlement Payment constitute a claim for wages under state law. Specifically, in the present case, this Court should refer to California law to obtain guidance regarding the meaning of "wages" because the Settlement Class consists of former employees of CCSI's locations in California, and the underlying class action was brought in a California state court based on claims under California law. The California Supreme Court has determined that

A wage is defined as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained

by the standard of time, task, piece, commission basis, or other method of calculation." [] We construe the term "wages" broadly to "include not only the periodic monetary earnings of the employee but also the other benefits to which he is entitled as a part of his compensation." [] "Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay." [] Incentive compensation, such as bonuses and profit-sharing plans, also constitutes wages.

Schachter v. Citigroup, Inc., 218 P.3d 262, 268 (Cal. 2009)

(citations omitted) (emphasis added). Thus, here again, "wages" refer to compensation paid to employees in exchange for labor or services rendered by that employee.

Accordingly, for the same reasons as set forth above, the Settlement Payment is not the payment of "wages" as that term is used in section 507(a)(4). Indeed, the Alleged Wage Claim is based on a contract, the Settlement Agreement, not on services rendered and, consequently, it is not entitled to priority under section 507(a)(4).

The Alleged Wage Claim may also not be characterized as "wages" for another reason. The right to be paid the Alleged Wage Claim does not arise out of an employment relationship. Instead, that claim is based upon

the agreements embodied in a contract -- the Settlement Agreement.

Specifically, as set forth above, it is indisputable that that employee-employer relationship between the Class Members and CCSI ended no later than March 2007. See Settlement Agreement ¶ 6 (defining Settlement Class as those people whose employment was terminated in or about March 2007). Since that time, CCSI has had no right or ability to control the Class Members' work or services. Therefore, the Class Members were not in an employment relationship with Debtors at the time they commenced the Class Action Litigation or upon entering into the Settlement Agreement. See S.G. Borello & Sons, Inc. v. Department of Industrial Relations, 769 P.2d 399, 404 (Cal. 1989) (stating that "[the] principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired"). Consequently, the Alleged Wage Claim cannot qualify as "wages" entitled to priority because it failed to arise out of an employment

relationship.⁵ See, e.g., In re Casimiro, Case No. 05-19558, 2007 Bankr. LEXIS 1926, *19-22 (Bankr. E.D. Cal. 2007) (concluding that former employees' claims in class action were not claims for wages entitled to priority under section 507(a)(4)); see also In re Kasson, 109 B.R. at 352 (finding that debtors' payments to milk suppliers during the Priority Period "are not wages within the meaning of § 507(a)(3)" because "[n]o employer-employee relationship existed between the milk suppliers and the debtor" when they sold milk supplies to the debtor).

On the above point, the California bankruptcy court's decision in Casimiro is particularly instructive. In Casimiro, former employees of the debtor filed a class action in California Superior Court before the debtor's bankruptcy filing, asserting the existence of unpaid wages and violations of various California employment laws. Id. at *3. The employees then claimed entitlement to section 507(a)(4) priority based on the class action allegations.

⁵ The only way the Alleged Wage Claim would constitute "wages" arising from an employer-employee relationship is if the Settlement Class concedes that the Alleged Wage Claim consists of payments arising from the Class Members' pre-March 2007 employment relationship with CCSI. However, in that case, the wages would have been "earned" outside of the Priority Period, when the Settlement Class provided its pre-March 2007 services to CCSI. See supra Section II.A.1.

Id. at *7. The bankruptcy court determined, however, that it was "not satisfied that the [employees] have the right to a priority claim under § 507(a)(4)." Id. at *19.

Specifically, the bankruptcy court concluded that "[the employees'] own pleadings suggest that none of the [employees] even qualify to have a claim under § 507(a)(4)." Id. at *19-20. In support of its conclusion, the bankruptcy court found that none of the employees alleged that they worked for debtors on or after the date that started the Priority Period. Id. at *21 n. 11. Moreover, the bankruptcy court pointed out that "[the employees] commenced the Civil Action against Casimiro . . . approximately three months before the Priority Period", and concluded that it was "not unreasonable to infer that the [employees] did not work for Casimiro and accrue any claim for unpaid wages after the Civil Action was filed." Id. at *22.

Here no inference need be made. The indisputable facts are that the Settlement Class consists of employees whose employment relationship was terminated in or around March 2007, well outside the Priority Period. Hence, the Alleged Wage Claim is not based on an employment relationship, but on litigation claims settled under the

Settlement Agreement. Accordingly, on this ground as well, the Alleged Wage Claim should be reclassified as an unsecured non-priority claim.

Nor should this Court be persuaded by the Settlement Class' argument that because the Settlement Agreement characterizes part of the Settlement Payment as "wages", that part of the Settlement Payment is entitled to priority treatment. See Weidler Response ¶¶ 19-21. First, although the Settlement Agreement refers to part of the Settlement Payment as "wages", the Settlement Agreement does so only for "tax purposes", not in exchange for services. In particular, the Settlement Agreement expressly provides that "[f]or tax purposes, the Parties agree to allocate 25% of any amounts paid to Class Members as wages, and 75% to non-wages" Settlement Agreement ¶ 19. And, the only other section of the Settlement Agreement that discusses "wage" treatment of the settlement payment does so within a section entitled "Tax Treatment of Claim Share Portion of Settlement Payments." Id. at ¶ 23(a).

Second, even assuming that 25% of the Settlement Payment could be treated as "wages", that part of the Settlement Payment relates to the period in or before March

2007. Thus, even if the Settlement Payment was in part a promise to pay "wages", the wages expressly relate to a period prior to the Priority Period.

As a result, the Alleged Wage Claim does not constitute a claim for "wages" entitled to priority treatment under section 507(a)(4) because it does not consist of compensation paid to employees in exchange for services. Rather, the Alleged Wage Claim is a claim for part of the Settlement Payment promised under the Settlement Agreement that was characterized by the parties as "wages" for the very limited purpose of determining who was responsible for tax payments. Therefore, the Alleged Wage Claim is not entitled to section 507(a)(4) priority as "wages" earned within the Priority Period.

B. No Amount Of The Alleged Wage Claim Constitutes "Back Pay" That Accrued During The Priority Period.

The Settlement Class also argues that, even if the entire Alleged Wage Claim is not entitled to priority, part of it is entitled to priority under section 507(a)(4) because it constitutes "back pay" that accrued during the Priority Period. See Weidler Response ¶ 22. In support, the Settlement Class asserts that although the employment relationship with CCSI was terminated in 2007, the Class

Members' "claim for lost wages continued to accrue up to and including the date of the Settlement Agreement, when that liability was fixed by contract." Id. Thus, the Settlement Class asserts that "the portion of the wages due under the Settlement Agreement that covers the Priority Period should be accorded priority status" under section 507(a)(4). Id. This argument should be rejected on numerous grounds, including some of the grounds already stated.

First, the Settlement Class' back pay argument rests on the proposition that back pay was earned up to the date the parties entered into the Settlement Agreement. As shown above, that argument should be rejected because no services were performed after March 2007.

Second, the Settlement Agreement itself forecloses the possibility of any back pay accruing during the Priority Period. Specifically, the Settlement Agreement expressly provides that the Settlement Payments are based on each Class Member's "number of years of service prior to termination in or about March 2007" rather than any time period after March 2007. Settlement Agreement ¶ 20(d). In addition, the Settlement Agreement releases CCSI from "any and all claims . . . contingent or

accrued, that relate to the Class Members' termination of employment . . . including without limitation . . . the nonpayment of wages" Id. at ¶ 28. Thus, to the extent that any of the Class Members are entitled to "back pay", that "back pay" related to a period in or before March 2007. As a result, any "back pay" claim is not entitled to priority under Bankruptcy Code section 507(a)(4).

Third, as previously discussed, section 507(a)(4) wage priority requires that (1) the payment qualify as "wages" by being compensation to an employee in exchange for services; and (2) the claimant "earn" the wages within the Priority Period by having provided services within that period. These principles do not differ with regard to "back pay." Indeed, courts have found that back pay awards are subject to the same requirements as ordinary wages. See, e.g., In re Sher-Del Foods, Inc., 186 B.R. 358, 361 (Bankr. W.D.N.Y. 1995) (citing prior cases for the proposition that "a back pay award under the National Labor Relations Act is in the nature of wages earned," so the "present back pay award will receive priority if . . . [the] back pay awards [] are earned within the time and monetary limits set forth in the Bankruptcy Code"). Consistent with

the aforementioned principles, courts analyzing the priority of back pay awards have found that back pay is "earned", at the very latest, when the employee is terminated and ceases to provide services to the debtor. See, e.g., Id. at 362 (concluding that back pay award was entitled to priority because the employees "earned their back pay award upon the debtor's failure to negotiate the effects of termination" which occurred within the priority period); In re Cargo, Inc., 138 B.R. 923, 927-28 (Bankr. N.D. Iowa 1992) (concluding that back pay award under the Worker Adjustment and Retraining Notification Act was "earned . . . upon termination" that occurred within the priority period).

As shown, no employer-employee relationship existed between the Class Members and the Debtors during the Priority Period, nor were any services provided by the Class Members to Debtors during that time because the Class Members were terminated in or around March 2007. As a result, the Class Members' claim for "back pay" could not have accrued within the Priority Period. See, e.g., Casimiro, 2007 Bankr. LEXIS 1926 at *22 (stating that "[i]t is not unreasonable to infer that the [former employees] did not work for [debtors] and accrue any claims for unpaid

wages after the Civil Action [for unpaid wages] was filed" three months before the Priority Period). Therefore, no amount of the Alleged Wage Claim is entitled to priority under section 507(a)(4), as no part of it was "earned" within the Priority Period on account of an employer-employee relationship.

Nor does In re Palau Corp., 18 F.3d 746 (9th Cir. 1994), a case cited by the Settlement Class, dictate a different conclusion. In Palau, the court concluded that a portion of a lost wage claim was entitled to priority. Id. at 749-51. However, the claim in Palau was made by employees of the debtor who were terminated during the period for which they could properly claim priority treatment. Id. at 748, n.2. As a result, the lost wage/back pay claim was "earned" within the requisite priority period.

In contrast, the present case involves a Settlement Class that was terminated well in advance of the Priority Period. Therefore, no amount of the Alleged Wage Claim was "earned" within the Priority Period. Thus, the Settlement Class' reliance on Palau is misplaced. Consequently, no part of the Alleged Wage Claim is a claim for "back pay" that accrued during the Priority Period, and

the entire Weidler Claim should be classified as a pre-
petition unsecured, non-priority claim.

CONCLUSION

For the reasons set forth herein, the Debtors respectfully request that this Court grant summary judgment and reclassify the Weidler Claim, in its entirety, to a general unsecured, non-priority claim.

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EXHIBIT A

(Settlement Agreement)

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14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
17 CENTRAL CIVIL WEST COURTHOUSE

18 DANIEL E. WEIDLER; MICHAEL F.
YEZBACK; ELOISE GARCIA, ANGIE
19 DURON, individually and on behalf of a
class of all similarly-situated individuals,

20 Plaintiffs,

21 v.

22 CIRCUIT CITY STORES, INC.; and
23 DOES 1 through 100, inclusive,

24 Defendants.
25

CASE NO. BC369011

**JOINT STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE OF CLASS
ACTION CLAIMS**

Date: TBD
Time: TBD
Dept: 324
Judge: Hon. Victoria G. Chaney
Complaint Filed: April 4, 2007
Trial Date: Not set

26 This Joint Stipulation of Settlement Agreement and Release of Class Action Claims
27 (“Stipulation of Settlement”) is made and entered into by and between Plaintiffs Daniel E.
28 Weidler, Michael F. Yezback, Eloise Garcia, and Angie Duron (“Plaintiffs” or “Class

Representatives”), on the one hand, and Defendant Circuit City Stores, Inc. (“Circuit City” or “Defendant”), on the other hand, and is subject to the terms and conditions hereof and the approval of the Court. As used herein, “Settlement” means the terms and conditions set forth in this Stipulation of Settlement. Plaintiffs and Defendant are referenced collectively herein as “the Parties.”

1. On April 4, 2007, Plaintiffs filed a proposed class action complaint in the Los Angeles County Superior Court, Case No. BC369011, captioned *Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, individually and on behalf of a class of all similarly situated employees v. Circuit City Stores, Inc.* On September 4, 2007, Plaintiffs filed a First Amended Complaint, captioned *Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, Angie Duron, individually and on behalf of a class of all similarly situated employees v. Circuit City Stores, Inc.*, (hereinafter referred to as “the Action”). The First Amended Complaint alleges that Plaintiffs and other similarly situated former employees of Defendant are entitled to recover general and compensatory damages, including unpaid wages, punitive damages, interest, attorneys’ fees, and costs under California Government Code section 12940 *et seq.* Plaintiffs’ complaint also contains a cause of action for wrongful discharge in violation of public policy, including violation of California Government Code sections 12940 and 12941, and seeks general and compensatory damages, including unpaid wages, punitive damages, interest, attorneys’ fees, and costs.

2. Plaintiffs believe the Action is meritorious as described in their complaint, and that this case is appropriate for class certification under California law. Plaintiffs have considered the expense and length of continued proceedings necessary to continue the Action against Defendant through class certification, pre-trial motions, trial, and any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties inherent in such litigation. Plaintiffs are also aware of the burdens of proof necessary to establish suitability of the case as a class action, liability for the claims asserted in the Action, Defendant’s defenses thereto, and the difficulties in establishing Plaintiffs’ damages. Plaintiffs have also considered the settlement negotiations conducted by the Parties and the recommendations of the

mediator (Antonio Piazza, Esq.), who is highly experienced in employment litigation and in complex class litigation. Based on the foregoing, Plaintiffs have determined that this Settlement is fair, adequate and reasonable, and in the best interests of the Settlement Class defined below. Should this Settlement not be finally approved by the Court, neither this Stipulation of Settlement nor any documents referred to herein, nor any action taken to carry out the Parties' Settlement is, or may be construed as or may be used as, an admission by or against the Plaintiffs as to the merits or lack thereof of the claims asserted by Plaintiffs.

3. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in Plaintiffs' complaint. Defendant contends, among other things, that at all times it has fully complied with the California Government Code, and that Plaintiffs and similarly situated employees were paid all wages owing to them under California law.

4. The Parties have conducted significant discovery and investigation of the facts and law both before and after the Action was filed. Such discovery and investigation have included, *inter alia*, the exchange of information pursuant to extensive informal discovery, meetings and conferences, two mediation sessions, and interviews of potential witnesses. Although formal discovery was stayed, the Parties exchanged and analyzed extensive electronic data, including information regarding Defendant's March 28, 2007 terminations which form the basis of Plaintiffs' complaint, documents reflecting Defendant's relevant policies and procedures, information relevant to the size and composition of the putative classes of former employees alleged in the complaint, documents regarding the implementation of the March 28, 2007 terminations, and information relevant to the damages alleged in the complaint. The Parties each hired experts to analyze employment data for class representatives and putative class members. On April 21, 2008 and May 15, 2008, the Parties participated in mediation sessions with mediator Antonio Piazza in San Francisco. The Parties subsequently reached a tentative agreement to settle the case, agreed on the key terms of the tentative settlement, and continued to negotiate specific terms of the settlement. The Parties now enter into this detailed, formalized settlement agreement to submit to the Court for approval in accordance with their earlier tentative agreement.

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5. For purposes of settling this lawsuit only, the Parties conditionally stipulate and agree that the requisites for establishing class certification are met with respect to a single "Settlement Class" as defined below, and stipulate to certification of this Settlement Class for purposes of this settlement only.

6. The Settlement Class shall be composed exclusively of "Class Members." A "Class Member" shall be defined as follows:

All persons who were employed by Circuit City in California and who were at least forty (40) years of age as of March 28, 2007, and whose employment with Circuit City was terminated on or about March 28, 2007 or shortly thereafter in relation to their wage rates.

7. For purposes of this settlement only, the Parties further conditionally stipulate and agree that:

a. The members of the Settlement Class are so numerous as to make it impracticable to join all Class Members.

b. The Settlement Class is ascertainable.

c. There are common questions of law and fact including, but not necessarily limited to, the following:

1) Whether the wage management initiative constitutes a companywide decision and/or policy, which was applied throughout the State of California, in a common scheme to terminate age-protected workers;

2) Whether the Defendant's March 28, 2007 terminations had a disparate impact on older workers in violation of the California Fair Employment and Housing Act (Government Code section 12940 *et seq.*);

3) Whether the Defendant had a valid business necessity defense that would have barred liability even if the terminations did disparately impact older workers;

4) Whether the implementation of the "wage management initiative" had the purpose of discriminating against older workers;

5) Whether Defendant engaged in the conduct alleged with malice, fraud or oppression under California law.

d. Plaintiffs' claims are typical of the claims of the members of the Settlement Class.

e. The deRubertis Law Firm and Allred, Maroko & Goldberg shall be deemed "Class Counsel" and will fairly and adequately protect the interests of the Class Members.

f. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

g. Questions of law and fact common to the members of the Settlement Class predominate over questions affecting individual members of those classes, and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

8. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims that exist between them arising from or related to the lawsuit or the Class Members' termination of employment in or about March of 2007 from Circuit City. In order to achieve a full and complete release of Defendant (and the Releasees as defined in Paragraph 9) of such disputes and claims, each Class Member (which includes any legal heirs and/or successors-in-interest of each Class Member), through execution of the Stipulation of Settlement by the Class Representatives, acknowledges that this Stipulation of Settlement is intended to include in its effect all claims arising from or related to the lawsuit or the Class Members' termination of employment in or about March of 2007, exclusive only of claims the Class Members may have under the related case of *Moncayo, et al. v. Circuit City*, Los Angeles Superior Court Case No. BC368973, contained in this Settlement, including all claims set forth in paragraph 28 of this Stipulation of Settlement, which each Class Member does not know or suspect to exist in his or her favor against Defendant. The Settlement Class, including Plaintiffs and each Class Member, waives all rights and benefits afforded by section 1542 of the Civil Code of the State of California with respect to such disputes and claims, and does so understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time

1 of executing the release, which if known by him or her must
2 have materially affected his or her settlement with the debtor.

3 9. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
4 full and complete settlement and release all claims arising from or related to the lawsuit or the
5 Class Members' termination of employment in or about March of 2007, including, without
6 limitation, any and all claims under state and federal law for unpaid damages, penalties and
7 attorneys' fees arising from the Class Members' termination of employment in or about March of
8 2007, and, as encompassed by the class definition, exclusive only of claims the Class Members
9 may have under the related case of *Moncayo, et al. v. Circuit City*, Los Angeles Superior Court
10 Case No. BC368973, which release shall include in its effect Circuit City Stores, Inc., and each of
11 their present and former affiliates, parent companies, subsidiaries, shareholders, officers, partners,
12 directors, employees, agents, attorneys, insurers, predecessors, successors and assigns and each
13 and all of their respective officers, partners, directors, servants, agents, shareholders, employees,
14 representatives, accountants, insurers, and attorneys, past, present, and future, and all persons
15 acting under, by, through, or in concert with any of them (collectively, the "Releasees").

16 10. Class Counsel has conducted a thorough investigation into the facts of the class
17 action, including an extensive review of relevant documents and electronic data, and has
18 diligently pursued an investigation of Class Members' claims against Defendant. Prior to the
19 Parties' tentative agreement to settle this case, Class Counsel examined extensive data pertaining
20 to Class Members, including dates of employment and termination, data regarding Class
21 Members' age and compensation rates, documents regarding the March 28, 2007 terminations,
22 and Class Members' potential damages. Based on the foregoing data, data developed during
23 discovery, and its own independent investigation and evaluation, Class Counsel is of the opinion
24 that this Settlement is fair, reasonable, and adequate, and is in the best interest of the Class
25 Members in light of all known facts and circumstances, including the risk of significant delay,
26 defenses asserted by Defendant to class certification and liability, and numerous potential
27 appellate issues.

28 ///

1 11. The Parties agree to cooperate and to take all steps necessary and appropriate to
2 dismiss this action with prejudice after all payments described herein have been made.

3 12. In order for Defendant to make payment to a Class Member, it is necessary for the
4 Class Member to provide certain information and confirm his or her identity and address. This
5 Settlement provides that Defendant will make payments of specified sums to every Class Member
6 who does not opt out of the Settlement and provides the information necessary to make payment
7 by submitting a timely Claim Form. This Settlement establishes a Maximum Class Payment from
8 which claims are paid, and establishes an individual entitlement for each Class Member who
9 provides the necessary information by submitting a valid, timely Claim Form.

10 13. This Settlement provides for a "claims made" process requiring Defendant to make
11 a maximum payment of FIFTEEN MILLION DOLLARS (\$15,000,000.00) that shall be referred
12 to herein as the "Maximum Payment." The Maximum Payment represents the maximum amount
13 that Defendant shall make toward the settlement of this action (except that Defendant shall also be
14 responsible for the employer's share of payroll taxes in addition to the Maximum Payment). The
15 Maximum Payment includes Class Counsel's attorneys' fees and costs, the enhancement
16 payments to the Class Representatives, and all costs of administration of this Settlement. Under
17 no circumstances shall Defendant be required to make any payment in excess of the Maximum
18 Payment.

19 14. The Parties agree to work together expeditiously to obtain preliminary and final
20 approval of this Settlement. The parties agree that California Code of Civil Procedure section 384
21 is not applicable to this Settlement. Neither Plaintiffs nor Class Counsel shall take, or cause any
22 other person to take, a position before the Court that California Code of Civil Procedure section
23 384 applies to this Settlement.

24 15. In the event that more than 10% of the Class Members exclude themselves from
25 the settlement by timely returning Request for Exclusion forms to the Claims Administrator,
26 Defendant may, at its sole option, rescind this Stipulation. In order to exercise its rights under
27 this paragraph, Defendant must give written notice to Class Counsel and to the Court no later than
28

1 fifteen (15) days after the deadline for Class Members to submit Request for Exclusion forms to
2 the Claims Administrator.

3 16. The "Maximum Class Payment" will consist of the portion of the Maximum
4 Payment remaining after subtraction of Court-approved attorneys' fees and costs, enhancement
5 awards to Class Representatives, and costs of administration. The Parties estimate that the
6 Maximum Class Payment will total approximately ELEVEN MILLION ONE HUNDRED
7 FORTY THOUSAND DOLLARS (\$11,140,000.00) if all fees, costs, and enhancements are
8 approved by the Court.

9 17. 100% of the Maximum Class Payment shall be available for distribution to Class
10 Members.

11 18. Each Class Member who submits a valid, timely Claim Form shall be entitled to a
12 share of the Class Payment based on the formula set forth below in paragraph 20(d).

13 19. For tax purposes the Parties agree to allocate 25% of any amounts paid to Class
14 Members as wages, and 75% to non-wages, reportable on IRS Form 1099, as required.

15 **TERMS OF SETTLEMENT**

16 20. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
17 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

18 a. This lawsuit and any claims, damages, or causes of action arising out of the
19 dispute which is the subject of this lawsuit, or related to the Class Members' termination of
20 employment in or about March of 2007, shall be settled and compromised as between the
21 Settlement Class and Defendant, subject to the terms and conditions set forth in this Stipulation of
22 Settlement and the approval of the Superior Court of Los Angeles County. In the event that the
23 Court does not execute and file the Order of Final Approval, or in the event that the Order of
24 Final Approval does not become final for any reason, or in the event that this Settlement is
25 modified in any material respect, or in the event that the Settlement Date, as defined herein, does
26 not occur, this Stipulation of Settlement shall be deemed null and void *ab initio* and shall be of no
27 force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

1 b. Settlement Date: The Settlement embodied in this Stipulation of
2 Settlement shall go into effect upon entry of a final order by the Court certifying the class and
3 dismissing this action with prejudice in accordance with the terms herein, and approving this
4 Stipulation of Settlement.

5 c. Initial Reductions from the Maximum Payment:

6 1) Attorneys' Fees: Subject to the Court's final approval, Defendant
7 agrees to Plaintiffs' request for an attorneys' fees award to Class Counsel in the amount of 25% of
8 the Maximum Payment (up to \$3.75 million), in order to compensate and reimburse Class
9 Counsel for all of the work already performed by Class Counsel in this case, all of the work
10 remaining to be performed by Class Counsel in documenting the Settlement, securing Court
11 approval of the Settlement, making sure that the Settlement is fairly administered and
12 implemented, and obtaining dismissal of the action, as well as for all costs and expenses incurred
13 by Class Counsel. Such a percentage fee is warranted considering, without limitation: (1) the
14 time and labor required of Class Counsel in this matter; (2) the complexity involved and the
15 results obtained; (3) the potential contingent nature of the compensation; (4) the opportunity costs
16 to Class Counsel in the time the engagement has taken away from other potential matters; (5) the
17 recognized benchmark award of 30% by California and federal courts in similar class action
18 cases; and (6) the informed consent of the Class Representatives to a percentage fee award up to
19 33⅓%. This attorneys' fee award shall be inclusive of costs advanced by Class Counsel to
20 prosecute this action.

21 2) Administration Costs: The Parties have selected Rosenthal &
22 Company as the "Claims Administrator" in this action. Reasonable administration fees and costs
23 shall be paid to the Claims Administrator for work performed and expenses incurred in
24 administration of this Settlement; provided, however, that such administration costs shall not
25 exceed Fifty Thousand Dollars (\$50,000.00). All payments to the Claims Administrator shall be
26 deducted from the Maximum Payment subject to Court approval.

27 3) Class Representative Enhancements: Subject to Court approval,
28 Defendant agrees to Class Counsel's request for an enhancement award of Fifteen Thousand

1 Dollars (\$15,000.00) each to Plaintiffs Daniel Weidler, Michael Yezback, Eloise Garcia, and
2 Angie Duron, for a total of Sixty Thousand Dollars (\$60,000.00) in consideration for serving as
3 Class Representatives. The enhancement awards are in addition to the claim share to which the
4 Class Representatives are entitled along with other claiming Class Members.

5 d. Payments to Class Members: In consideration for this Settlement and the
6 release of all claims of the Settlement Class against Defendant, Defendant agrees to pay to each
7 member of the Settlement Class who submits a valid, timely claim a share of the Maximum Class
8 Payment.

9 The Maximum Class Payment will be divided among the Class Members by a formula
10 based on the number of years of service prior to termination in or about March 2007. The
11 determination of each Class Member's years of service shall be made by the claims administrator
12 based on company records. Each Class Member shall automatically receive one (1) point (the
13 initial point). Then, for each five (5) years of service, a class member shall receive an additional
14 point. For example, a Class Member who worked two (2) years shall receive one (1) point total
15 (the initial point). A Class Member who worked seven (7) years shall receive two (2) points (the
16 initial point plus an additional point upon completing five (5) years of service).

17 At the conclusion of the claims period, the claims administrator shall determine the total
18 number of points attributable to valid, timely claims and the total number of points attributable to
19 Class Members who do not submit valid claims and/or opt-out. The claims administrator will
20 then divide the Maximum Class Payment by the total number of points attributed to all Class
21 Members, including those who did not submit a valid claim or opted out. This calculation will
22 result in a specific dollar value per point for all Class Members, regardless of whether the Class
23 Member submitted a claim or opted out.

24 Following the determination of the specific dollar value per point, the claims administrator
25 will deduct from the Maximum Class Payment the amount of dollars attributable to those Class
26 Members who do not submit valid, timely claims and/or opt-out. The remaining amount of the
27 Maximum Class Payment shall be distributed to the Class Members who submitted valid, timely
28 claims. Each Class Members' respective payment shall be calculated by multiplying the Class

1 Member's number of points by the dollar value per point.

2 21. Treatment of Unclaimed Portions of Maximum Class Payment: To the extent that
3 any Class Member fails to make a claim, the portion of the Maximum Class Payment initially
4 allocated to that Class Member will remain the property of Defendant.

5 22. Funding and Payout of Settlement:

6 a. Settlement Funding Deadline: Within ten (10) business days of the
7 "Effective Date" of final approval by the Court, the Claims Administrator will notify Defendant
8 and Class Counsel of the actual amount to be paid under the Settlement, including the payment of
9 claims administration costs, all payments for Class Counsel's attorneys' fees and costs,
10 enhancement payments to the four Class Representatives, and the claims of all individual Class
11 Members. Within twenty (20) days of said notification, Defendant will transfer funds to the
12 Claims Administrator sufficient to make all such payments. The Effective Date of the Settlement
13 shall be the date of final approval if no objections are filed to the settlement. If objections are
14 filed and overruled, and no appeal is taken of the final approval order, then the Effective Date of
15 final approval shall be sixty-five (65) days after the trial court enters final approval. If an appeal
16 is taken from the Court's overruling of objections to the settlement, then the Effective Date of
17 final approval shall be twenty (20) days after the appeal is withdrawn or after an appellate
18 decision affirming the final approval decision becomes final.

19 b. Settlement Payout Timetable: Within thirty (30) business days of the
20 "Effective Date" of final approval of the settlement, the Claims Administrator will pay all claims,
21 and Court-approved attorneys' fees, costs, and enhancement payments. No money will be
22 distributed unless and until the Effective Date of final approval occurs.

23 23. Miscellaneous Provisions regarding Settlement Funds:

24 a. Tax Treatment of Claim Share Portion of Settlement Payments: Of the
25 amount to be paid to Class Members, 25% is allocated to wages, and 75% to non-wages. The
26 Claims Administrator will be responsible for all required withholdings for portions of any
27 payments designated as wages. Each Class Member who receives a payment under this
28 Settlement will receive an IRS Form W-2 from the Claims Administrator for his or her portion of

1 the amount treated as wages and will be responsible for correctly characterizing this compensation
2 for tax purposes and for payment of any taxes owing on said amount. If required, each Class
3 Member will receive an IRS Form 1099 from the Claims Administrator for his or her portion of
4 the amount treated as interest or non-wage claims and will be responsible for correctly
5 characterizing this compensation for tax purposes and for payment of any taxes owing on said
6 amount.

7 b. Tax Treatment of Class Representative Enhancement Award: Class
8 Representatives will receive an IRS Form 1099 for their individual enhancement award, and will
9 be responsible for correctly characterizing this additional compensation for tax purposes and for
10 the payment of any taxes owing on said amount.

11 c. Resolution of Disputes Relating To Amount of Claim to be Paid to Class
12 Member: A "Qualified Claimant" will be defined as an individual in the Settlement Class who
13 timely submits a Claim Form signed under the penalty of perjury. If a Qualified Claimant timely
14 disputes Defendant's records (on a Claim Form) as to the dates that he or she met the definition of
15 a Class Member, or as to the proper size of his or her claim, the Parties' counsel will make a good
16 faith effort to resolve the dispute informally. If they cannot agree, the dispute shall be submitted
17 to the Claims Administrator, who shall examine Defendant's records and make a good faith
18 determination, which determination shall be final.

19 d. Right to Rescission: Notwithstanding any other provision of this
20 Stipulation of Settlement, Defendant shall retain the right, in the exercise of its sole discretion, to
21 nullify the settlement within fifteen (15) days of expiration of the opt-out deadline, if more than
22 10% of the Class Members opt out of the settlement by timely submitting Request for Exclusion
23 forms. In the event of such a rescission, no party may use the fact that the Parties agreed to settle
24 this case as evidence of Defendant's liability in this lawsuit or the lack thereof. All signatories
25 and their counsel must not encourage opt-outs. Class Counsel and Class Representatives
26 specifically agree not to solicit opt-outs, directly or indirectly, through any means.

NOTICE TO THE PLAINTIFF CLASS

24. The Parties agree that within ten (10) days after preliminary approval of this settlement agreement, Defendant will provide to the Claims Administrator all of the following information about each Class Member in a format requested by the Claims Administrator: (1) name; (2) last known home address; (3) Social Security number; (4) the dates of employment of each Class Member. The Claims Administrator will perform address updates and verifications as necessary prior to the first mailing. Within twenty (20) days after preliminary approval, and subject to the approval of the Court, the Claims Administrator will mail a Notice of Proposed Class Action Settlement ("Notice") in the form attached hereto as Exhibit "A" to each Class Member, by first class mail. Attached to the Notice will be a Claim Form and Request for Exclusion Form, in the forms attached hereto as Exhibits "B" and "C," respectively.

CLAIM PROCESS

25. Class Members will be permitted no more than forty-five (45) days from the date the notices are mailed by the Claims Administrator to postmark or fax Claim Forms back to the Claims Administrator. Class Members will also have forty-five (45) days from the date the Notices are mailed by the Claims Administrator to postmark objections and/or Requests For Exclusion. The Claims Administrator will perform two skip-traces on returned mail and re-mail claim forms to an updated address (if any) within fifteen (15) business days of receipt of the returned mail. It is the intent of the Parties that reasonable means be used to locate Class Members. Any portion of the Maximum Class Payment not timely claimed shall be retained by Defendant.

26. Within five (5) business days of receipt by the Claims Administrator of each timely submitted Claim Form, the Claims Administrator will send a deficiency notice to the Class Member for any irregularities in the completed Claim Form. The deficiency notice will provide the Class Members no more than fifteen (15) days from the mailing of the deficiency notice to postmark the response to any deficiencies in writing. The failure of a Class Member to execute a Claim Form under penalty of perjury, timely submit a claim form, or timely submit a response to any deficiency notice shall invalidate a claim and will not be considered deficiencies subject to

1 cure, unless counsel for both of the Parties stipulate to allow cure.

2 27. All original Claim Forms shall be sent or faxed directly to the Claims
3 Administrator at the address indicated on the Claim Form. Defendant has made a good faith
4 effort to identify all class members and will provide a detailed list of such class members to the
5 Claims Administrator on an Excel spreadsheet or in such other format as requested by the Claims
6 Administrator. The Claims Administrator will certify jointly to Class Counsel and Defendant's
7 counsel which claims were timely filed. The Claims Administrator shall be responsible for
8 calculating the payment to each Class Member, issuing checks, withholding of all required state
9 and federal taxes, and mailing the payments. Upon completion of the claims period, the Claims
10 Administrator shall provide Plaintiffs and Defendant with a report listing the amount of all
11 payments to be made to each Qualified Claimant. Proof of payment will be filed with the Court
12 and provided to the Parties' counsel.

13 **RELEASE BY THE CLASS**

14 28. Upon final approval by the Court, the Settlement Class, and each Class Member
15 who has not submitted a valid Request For Exclusion form, will release Circuit City, and each of
16 their present and former affiliates, parent companies, subsidiaries, shareholders, officers, partners,
17 directors, employees, agents, attorneys, insurers, predecessors, successors and assigns and each
18 and all of their respective officers, partners, directors, servants, agents, shareholders, employees,
19 representatives, accountants, insurers, and attorneys, past, present, and future, and all persons
20 acting under, by, through, or in concert with any of them (collectively, the "Releasees"), from any
21 and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
22 damages, action, or causes of action, contingent or accrued, that relate to the Class Members'
23 termination of employment in or about March of 2007 from Circuit City, exclusive only of claims
24 the Class Members may have under the related case of *Moncayo, et al. v. Circuit City*, Los
25 Angeles Superior Court Case No. BC368973, under any federal, state, or local law, including
26 without limitation: allegations of discrimination, wrongful termination, harassment, retaliation,
27 the nonpayment of wages under any federal, state, or local law; allegations of the failure to pay
28 penalties under the California Labor Code (including without limitation penalties under Labor

1 Code sections 203 and 226); or any other termination related allegations that could have been
2 alleged in or that arise from the complaint, including without limitation all claims arising under
3 the FLSA, the California Labor Code or Business and Professions Code (including section
4 17200), or the IWC Wage Orders, claims for restitution and other equitable relief, conversion,
5 liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever,
6 retirement, health benefits, stock options, stock deferred compensation benefits, or any other
7 benefit claimed on account of unpaid wages, whether known or unknown, and all attendant
8 attorneys' fees and costs, arising therefrom.

9 29. Upon final approval by the Court, the Settlement Class and each Class Member
10 who has not submitted a valid Request For Exclusion form will expressly waive any and all rights
11 they may have under the Older Workers Benefits Protection Act (OWBPA). This Agreement is
12 intended to satisfy the requirements of the Older Workers' Benefit Protection Act, 29 U.S.C.
13 § 626(f) and to effectuate the release by the Settlement Class, and each Class Member who has
14 not submitted a valid Request For Exclusion form, of any potential claims under the Federal Age
15 Discrimination in Employment Act. The release of such potential claims shall not become
16 effective or enforceable until the eighth day after the deadline for submitting a Claim Form
17 ("Enforceable Date"). In other words, any Class Member who submits a Claim Form may revoke
18 their claim within seven (7) days of the expiration of the claims period, which ends on DATE. In
19 order to be effective, a revocation must be in writing and received by the Claims Administrator,
20 by 5:00 p.m. not later than the seventh day after the end of the claims period. Class Members are
21 advised to consult with Class Counsel or another attorney regarding this Settlement. This
22 Settlement does not waive or release any rights or claims that any Class Member may have under
23 the Age Discrimination in Employment Act that arise after the date of final approval by the Court.

24 Plaintiffs acknowledge and agree that they have read and understand the terms and
25 conditions of this Agreement; that they understand that by entering into this Agreement, the
26 Settlement Class is giving up potentially valuable legal rights and intends to be bound by all the
27 terms and conditions set forth herein; that the Settlement Class is entering into this Agreement
28 freely, knowingly and voluntarily; that this Agreement advised them in writing that they may

1 consult with an attorney before executing this Agreement, if desired; that they have obtained and
2 considered such legal counsel as she deems necessary.

3 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

4 30. The Parties shall promptly submit this Stipulation of Settlement to the Court in
5 support of a request for preliminary approval and determination by the Court as to its fairness,
6 adequacy, and reasonableness. Promptly upon execution of this Stipulation of Settlement, the
7 Parties shall apply to the Court for the entry of a preliminary order substantially in the following
8 form:

- 9 a. Scheduling a fairness hearing on the question of whether the proposed
10 settlement, including payment of attorneys' fees and costs, claims administration costs, and the
11 Class Representatives' enhancement awards, should be finally approved as fair, reasonable, and
12 adequate as to the members of the Class;
- 13 b. Certifying the Class for purposes of settlement;
- 14 c. Certifying this action under California Code of Civil Procedure section 382
15 and California Rules of Court, rule 3.760 *et seq.* as a class action for purposes of settlement;
- 16 d. Approving as to form and content the proposed Notice;
- 17 e. Approving as to form and content the proposed Claim Form;
- 18 f. Approving as to form and content the proposed Request for Exclusion
19 form;
- 20 g. Directing the mailing of the Notice, Claim Form and Request for Exclusion
21 form by first class mail to the Class Members;
- 22 h. Preliminarily approving the settlement subject only to the objections of
23 Class Members and final review by the Court;
- 24 i. Preliminarily approving Class Counsel's attorneys' fees and costs subject
25 to final review of the Court;
- 26 j. Preliminarily approving Class Representatives' enhancement awards
27 subject to final review of the Court;
- 28 k. Preliminarily approving the payment of fees and costs to the Claims

1 Administrator for administration of this Settlement, subject to final review of the Court.

2 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

3 31. Following final approval of the settlement provided for in this Stipulation of
4 Settlement, Class Counsel will submit a proposed final order:

5 a. Approving the Settlement, adjudging the terms thereof to be fair,
6 reasonable, and adequate, and directing consummation of its terms and provisions;

7 b. Approving the award of attorneys' fees and costs to Class Counsel;

8 c. Approving the enhancement award to Plaintiffs;

9 d. Approving the payment of fees and costs of administration to the Claim
10 Administrator; and

11 e. Dismissing this Action on the merits and with prejudice and permanently
12 barring all members of the Settlement Class from prosecuting against Releasees, any individual or
13 class claims arising out of the acts, facts, transactions, occurrences, representations, or omissions
14 set forth in the lawsuit, that were or could have been asserted in the Action, through the date of
15 the final approval of this Settlement upon satisfaction of all payments and obligations hereunder.

16 **PARTIES' AUTHORITY**

17 32. The signatories hereto hereby represent that they are fully authorized to enter into
18 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions hereof.

19 **MUTUAL FULL COOPERATION**

20 33. The Parties agree to fully cooperate with each other to accomplish the terms of this
21 Stipulation of Settlement, including but not limited to, execution of such documents and to take
22 such other action as may reasonably be necessary to implement the terms of this Stipulation of
23 Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all
24 efforts contemplated by this Stipulation of Settlement and any other efforts that may become
25 necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the
26 terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement,
27 Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all
28 necessary steps to secure the Court's final approval of this Stipulation of Settlement.

NO PRIOR ASSIGNMENTS

34. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION

35. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Each of the Parties hereto has entered into this Stipulation of Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

CONSTRUCTION

36. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and that this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in the drafting of this Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

37. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

38. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

39. This Stipulation of Settlement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

40. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

SIGNATORIES

41. It is agreed that because of the large number of Class Members, it is impossible or impractical to have each Class Member execute this Stipulation of Settlement. The Notice (Exhibit "A" hereto) will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Stipulation of Settlement were executed by each member of the Class.

PUBLIC COMMENT

42. All of the Parties and their counsel agree that they shall not share or have any communications with any member of the media other than to say that "the matter has been resolved to the mutual satisfaction of the Parties."

NO RETALIATION BY DEFENDANT

43. Defendant shall not take any adverse employment action or otherwise target, retaliate, or discriminate against any of the Plaintiffs or Class Members by reason of the fact that any of them: (a) instituted or in any way participated in this Action, or (b) elects or indicates an intention to participate or not to participate in the Settlement memorialized in this Stipulation of Settlement or any order entered by the Court approving its terms.

COUNTERPARTS

44. This Stipulation of Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

DATED: _____

CIRCUIT CITY STORES, INC.

By: 

NAME

Title Senior VP, General Counsel + Secy

DATED: _____

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: _____

E. JOSEPH CONNAUGHTON

JEFFREY P. AMES

Attorneys for Defendant

CIRCUIT CITY STORES, INC.

DATED: _____

DANIEL E. WEIDLER

DATED: _____

MICHAEL F. YEZBACK

DATED: _____

ELOISE GARCIA

DATED: _____

ANGIE DURON

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DATED: _____

CIRCUIT CITY STORES, INC.

By: 

NAME

Title Senior VP, General Counsel + Secy

DATED: SEPT 17, 2008

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: 

E. JOSEPH CONNAUGHTON

JEFFREY P. AMES

Attorneys for Defendant

CIRCUIT CITY STORES, INC.

DATED: _____

DANIEL E. WEIDLER

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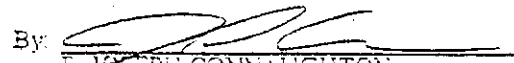
DATED: 9/17/08

CIRCUIT CITY STORES, INC.


By: 
NAME
Title Senior VP, General Counsel - Store

DATED: SEP 17, 2008

PAUL PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: 
E. JOSEPH CONNAUGHTON
JEFFREY P. AMES
Attorneys for Defendant
CIRCUIT CITY STORES, INC.

DATED: 9/19/08


DANIEL E. WEIDNER

DATED: _____

MICHAEL F. YEZBACK

DATED: _____

ELOISE GARCIA

DATED: _____


ANGIE DURON

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CIRCUIT CITY STORES, INC.

By: 
NAME
Title Senior VP, General Counsel + Secy

DATED: SEP 17, 2008

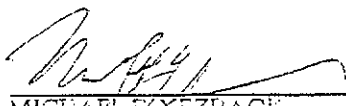
PAUL PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: 
E. JOSEPH CONNAUGHTON
JEFFREY P. AMES
Attorneys for Defendant
CIRCUIT CITY STORES, INC.

DATED: _____

DANIEL E. WEIDLER

DATED: 9/19/08


MICHAEL E. YEZBACK

DATED: _____

ELOISE GARCIA

DATED: _____

ANGIE DURON

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DATED: _____

CIRCUIT CITY STORES, INC.

By: 

NAME

Title Senior VP, General Counsel + Geny

DATED: SEP 17, 2008

PAUL PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: 

E. JOSEPH CONNAUGHTON

JEFFREY P. AMES

Attorneys for Defendant

CIRCUIT CITY STORES, INC.

DATED: _____

DANIELE WEIDLER

DATED: _____

MICHAEL F. YEZBACK

DATED: 9/19/08


ELOISE GARCIA

DATED: _____

ANGIE DURON

PAUL PLEVIN,
SULLIVAN &
CONNAUGHTON LLP

JOINT STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE OF CLASS
ACTION CLAIMS

COUNTERPARTS

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DATED: _____

CIRCUIT CITY STORES, INC.

By: 
NAME
Title Senior VP, General Counsel - Secary

DATED: SEPT 17, 2008

PAUL PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: 
E. JOSEPH CONNAUGHTON
JEFFREY P. AMES
Attorneys for Defendant
CIRCUIT CITY STORES, INC.

DATED: _____

DANIEL E. WEIDLER


DATED: _____

MICHAEL F. YEZBACK

DATED: _____

ELOISE GARCIA

DATED: 9/19/08


ANGIE DURON

PAUL PLEVIN,
SULLIVAN &
CONNAUGHTON LLP

JOINT STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE OF CLASS
ACTION CLAIMS

1 DATED: 9-18-08

ALLRED, MAROKO & GOLDBERG

By: 

NATHAN GOLDBERG
Attorneys for Plaintiffs

6 DATED: 9/22/08

THE deRUBERTIS LAW FIRM

By: 

DAVID deRUBERTIS
Attorneys for Plaintiffs

EXHIBIT B

(Preliminary Approval Order)

Nathan Goldberg, State Bar No. 61292
Michael Maroko, State Bar No. 62013
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Los Angeles, California 90048
Telephone: (323) 653-6530
Facsimile: (323) 653-1660

David M. deRubertis, State Bar No. 208709
The deRubertis Law Firm
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Woodland Hills, California 91367
Telephone: (818) 227-8605
Facsimile: (818) 227-8616
Email: David@deRubertisLaw.com

Attorneys for Plaintiffs Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and
Angie Duron, individually and on behalf of a class of all
similarly-situated individuals

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL CIVIL WEST

DANIEL E. WEIDLER, MICHAEL F. YEZBACK,
ELOISE GARCIA, ANGIE DURON, individually and
on behalf of a class of all similarly-situated individuals,

Plaintiffs,

v.

CIRCUIT CITY STORES, INC.; and DOES 1 through
100, inclusive,

Defendants.

) Case No.: BC 369 011
) [Assigned to Hon. Victoria Chaney,
) Dept. 324, Civil Central
) West-Complex Designation]
) [Related to Case Nos. BC 368973 and
) BC 389968]

) **~~PROPOSED~~ ORDER**
) **GRANTING PRELIMINARY**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT, PROVISIONAL**
) **CERTIFICATION OF CLASS**
) **FOR SETTLEMENT PURPOSES,**
) **APPROVAL OF NOTICE, AND**
) **SETTING OF FINAL FAIRNESS**
) **HEARING**

) Date: September 25, 2008
) Time: 9:00 a.m.
) Dept.: 324

) Complaint Filed: April 4, 2007

FILED
LOS ANGELES SUPERIOR COURT

SEP 25 2008

JOHN A. CLARKE, CLERK
BY ELMER SABALBURG, DEPUTY

1 The motion of Plaintiffs Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and Angie
2 Duron, on behalf of the Settlement Class as defined below, for an order granting preliminary
3 approval of class action settlement came on for hearing on September 25, 2008 at 9:00 a.m. in
4 Department 324 of the above-entitled Court, the Honorable Judge Victoria G. Chaney, presiding.
5 The Court having considered the motion and all submissions in connection with the proposed
6 settlement and argument of counsel at the hearing, and having concluded that it has jurisdiction to
7 adjudicate the issues raised and thus to provide relief, IT IS HEREBY ORDERED THAT:

8
9 JURISDICTION:

10 1. The Court has jurisdiction over the subject matter and all parties to this action,
11 including the Settlement Class.

12
13 PLAINTIFF AND SETTLEMENT CLASS:

14 2. The Court orders the certification of this litigation as a class action for settlement
15 purposes only. The certified "Settlement Class" consists of: All persons who were employed by
16 Circuit City in California and who were at least forty (40) years of age as of March 28, 2007, and
17 whose employment with Circuit City was terminated on or about March 28, 2007 or shortly
18 thereafter in relation to their wage rates.

19 3. The Court orders the appointment of Daniel E. Weidler, Michael F. Yezback, Eloise
20 Garcia, and Angie Duron as the Class Representatives.

21 4. The Court orders the appointment of Nathan Goldberg and Michael Maroko of
22 Allred, Maroko & Goldberg and David M. deRubertis of The deRubertis Law Firm as co-class
23 counsel.

24 5. The Court has not certified the Settlement Class for any purpose other than to
25 effectuate the Settlement Agreement, to which the parties have consented on the condition that it
26 receives final approval. If this Settlement Agreement is terminated pursuant to its terms or if it is not
27 otherwise approved, this order conditionally certifying the Settlement Class shall be treated as void
28 *ab initio* and automatically vacated *nunc pro tunc* upon written notice to the Court. The litigation

1 shall then proceed as if the Court had never conditionally certified the Settlement Class and such
2 findings in paragraphs 2 through 4 had never been made, without prejudice to the ability of any party
3 to request or oppose class certification on any basis.

4 6. The Court finds that preliminary approval of the Settlement Agreement is appropriate
5 because its terms appear to be fair, reasonable and adequate to the Settlement Class.

6 7. The Court approves the Notice of Proposed Class Action Settlement, substantially in
7 the form and content of Exhibit "B" to the Declaration of David M. deRubertis filed in support of the
8 motion for preliminary approval. The Court finds that this is the best notice practicable to the
9 Settlement Class under the circumstances and constitutes valid notice to its members. The Court
10 further approves the Claim Form and Request for Exclusion from Class Action Settlement,
11 substantially in the form and content of Exhibits "C" and "D" respectively to the Declaration of
12 David M. deRubertis filed in support of the motion for preliminary approval.

13 8. Within ten (10) days of preliminary approval, Defendant shall supply the claims
14 administrator with the name, last known address, social security number and dates of employment of
15 each class member. Within twenty (20) days after preliminary approval, the claims administrator
16 shall mail the approved Notice of Proposed Class Action Settlement as well as the Claim Forms and
17 Request for Exclusion forms.

18 9. Class members shall have forty-five (45) days from the date of mailing to postmark or
19 return by facsimile either their Claim Form or opt-out notice.

20 10. If the Settlement Agreement receives final Court approval, the final judgment will be
21 res judicata and prohibit any prior, concurrent, or subsequent litigation brought individually, by, or in
22 the name of, or otherwise on behalf of any member of the Settlement Class against Defendant related
23 to or arising out of the Class Members' termination of employment by Defendant on or about March
24 28, 2007, ^{UGC 9/25/08} ~~in relation to their wage rate.~~ Full effect will be given to the terms of the release contained
25 in the Settlement Agreement except as to any Class Member who validly opts-out.

26 11. If the Settlement Agreement does not receive final Court approval, is terminated, or
27 fails to become effective in accordance with its terms, the parties shall be restored to their respective
28 positions in litigation as of the entry date of that agreement. In such event, the terms and conditions

1 of the Settlement Agreement shall have no further force and effect on the parties and shall not be
2 used in this litigation or in any other proceeding for any purpose, and any judgment or order entered
3 by this Court in accordance with the terms of the Settlement Agreement shall be treated void *ab*
4 *initio* and vacated *nunc pro tunc*.

5 12. The Court will determine whether the Settlement Agreement will receive final
6 approval at the Final Fairness Hearing on 12/12/08 at 10⁰⁰.m.

7 a. 3 days before the date of the Final Fairness Hearing, Plaintiffs shall file
8 with the Court moving papers in support of final approval of the Settlement
9 Agreement and a request for attorney's fees/costs.

10 b. The Court will hear Class Member objections to the proposed settlement (if
11 any) at the Final Fairness Hearing if the objecting Class Member files a
12 written statement with the Court, and serves such written statement on counsel
13 for the parties, no later than forty-five (45) days after the date the Notice of
14 Proposed Class Action Settlement is mailed.

15 13. The provisions of this order for the Preliminary Approval of Class Action Settlement
16 are stipulated to and entered as a result of a compromised settlement of disputed claims. Thus,
17 nothing contained herein shall be construed at any time or in any forum as an admission or finding,
18 express or implied, of any fault, liability or wrongdoing by any party.

19
20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

21
22 Dated: 9/25/08

23 
The Honorable Victoria G. Chaney
Judge of the Los Angeles Superior Court

EXHIBIT C

(Approval Order)

1 Nathan Goldberg, State Bar No. 61292
Michael Maroko, State Bar No. 62013
2 **ALLRED, MAROKO & GOLDBERG**
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8 Email: David@deRubertisLaw.com

9 Attorneys for Plaintiffs Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and
Angie Duron, individually and on behalf of a class of all
10 similarly-situated individuals

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13 **CENTRAL CIVIL WEST**

14 DANIEL E. WEIDLER, MICHAEL F. YEZBACK,
ELOISE GARCIA, ANGIE DURON, individually and
15 on behalf of a class of all similarly-situated individuals,

16 Plaintiffs,

17 v.

18 CIRCUIT CITY STORES, INC.; and DOES 1 through
19 100, inclusive,

20 Defendants.

) Case No.: BC 369 011
) [Assigned to Hon. Victoria Chaney,
) Dept. 324, Civil Central
) West-Complex Designation]
) [Related to Case Nos. BC 368973 and
) BC 389968]

) **NOTICE OF RULING ON**
) **PLAINTIFFS' MOTION FOR**
) **FINAL APPROVAL OF CLASS**
) **ACTION SETTLEMENT AND**
) **FINAL JUDGEMENT**

) Date: December 12, 2008
) Time: 10:00 a.m.
) Dept.: 324

) Complaint Filed: April 4, 2007

24
25 On December 12, 2008, Plaintiffs' Motion for Final Approval of Class Action Settlement and
26 Final Judgment came on for hearing in Department 324, Central Civil West, the Honorable Victoria
27 G. Chaney, presiding. David deRubertis of The deRubertis Law Firm and Nathan Goldberg and
28

1 Gloria Allred of Allred, Maroko & Goldberg appeared for plaintiffs. E. Joseph Connaughton of
2 Paul, Plevin, Sullivan & Connaughton LLP appeared for defendant.

3 At that hearing, the Court granted final approval and issued the Order attached to this Notice
4 as Exhibit "A."

5
6 DATED: December 26, 2008

Allred, Maroko & Goldberg

The deRubertis Law Firm

7
8
9 By

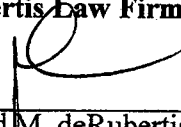

David M. deRubertis, Esq.
Attorneys for Plaintiffs
Daniel E. Weidler, Michael F. Yezback and
Eloise Garcia, Angie Duron individually and on
behalf of a class of all similarly-situated
individuals

EXHIBIT “A”

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9 Attorneys for Plaintiffs Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and
Angie Duron, individually and on behalf of a class of all
10 similarly-situated individuals

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 **CENTRAL CIVIL WEST**

14 DANIEL E. WEIDLER, MICHAEL F. YEZBACK,
15 ELOISE GARCIA, ANGIE DURON, individually and
on behalf of a class of all similarly-situated individuals,

16 Plaintiffs,

17 v.

18 CIRCUIT CITY STORES, INC.; and DOES 1 through
19 100, inclusive,

20 Defendants.

) Case No.: BC 369 011
) [Assigned to Hon. Victoria Chaney,
) Dept. 324, Civil Central
) West-Complex Designation]
) [Related to Case Nos. BC 368973 and
) BC 389968]

~~PROPOSED~~ **ORDER
GRANTING FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT**

) Date: December 12, 2008
) Time: 10:00 a.m.
) Dept.: 324

) Complaint Filed: April 4, 2007

25 The motion of Plaintiffs Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and Angie
26 Duron, on behalf of the Settlement Class as defined below, for an order granting final approval of
27 the class action settlement came on for hearing on December 12, 2008 at 10:00 a.m. in Department
28

324 of the above-entitled Court, the Honorable Judge Victoria G. Chaney, presiding. After reviewing all the papers submitted in connection with the motion, the oral argument of counsel, and good cause having been shown thereby, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter and all parties to this action, including the Settlement Class;

2. The Court hereby grants final approval of the Settlement on the terms stated in the in the Joint Stipulation of Settlement Agreement and Release of Class Action Claims, subject to the further administration of said settlement in the bankruptcy proceeding. The Court finds that the terms are fair, reasonable and adequate pursuant to California Code of Civil Procedure section 382;

3. The Court hereby certifies a class for settlement purposes consisting of: All persons who were employed by Circuit City in California and who were at least forty (40) years of age as of March 28, 2007, and whose employment with Circuit City was terminated on or about March 28, 2007 or shortly thereafter;

4. The Court orders the appointment of Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and Angie Duron as the Class Representatives;

5. The Court orders the appointment of Nathan Goldberg and Michael Maroko of Allred, Maroko & Goldberg and David M. deRubertis of The deRubertis Law Firm as co-class counsel;

6. The Court approves claims administration costs of CPT Group, Inc. in an amount not less than \$13,000 and not to exceed \$50,000 from the settlement funds, the final amount to be determined after CPT Group, Inc. determines what additional work must be done to administer the settlement through the Bankruptcy Court;

7. The Court hereby awards incentive payments of \$15,000 to be paid to each named Plaintiff from the settlement funds;

8. The Court hereby awards Plaintiffs' counsel, Allred, Maroko & Goldberg and The deRubertis Law Firm, attorneys' fees and costs of 25% of the maximum settlement fund in the amount of \$3,750,000.

1 9. The Court hereby dismisses Plaintiffs' claims against Defendants with prejudice.

2 10. The Court hereby orders that class members who did not timely exclude themselves
3 from the settlement have released their claims against Defendants as set forth in the Joint Stipulation
4 of Settlement Agreement and Release of Class Action Claims.

5 11. The Court hereby directs that the Clerk of the Court enter the Court's order as a final
6 judgment; and,

7 12. The Court hereby orders that, without affecting the finality of the final judgment, it
8 reserves continuing jurisdiction over the parties for purposes of implementing, enforcing and/or
9 administering the Settlement or enforcing the terms of the Judgment but only to the extent that such
10 action is so ordered or permitted by the United States Bankruptcy Court Eastern District of Virginia
11 (Richmond Division).

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

13
14 Dated: 12/12/08


The Honorable Victoria G. Chaney
Judge of the Los Angeles Superior Court

PROOF OF SERVICE

Case Name: *Weidler, et. al. v. Circuit City, Inc.*
Case Number: *BC 369 011*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed by the office of a member of the court in this action at whose direction the within service was made. My business address is 21800 Woodland Hills, California 91367. I am over the age of 18 and not a party to the within action. On the below executed date, I served upon the interested parties in this action the following described document(s): **NOTICE OF RULING ON PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL JUDGEMENT.**

/XXX/ MAIL: by placing a true copy thereof enclosed in a sealed envelope with First Class prepaid postage thereon in the United States mail at Woodland Hills, California address(es) as set forth below, pursuant to Code of Civil Procedure Section 1013a(1):

/___/ OVERNIGHT DELIVERY: by causing it to be mailed by a method of overnight delivery with instructions for delivery the next business day with delivery fees paid or provided for in the United States mail at Woodland Hills, California address(es) as set forth below, pursuant to Code of Civil Procedure Section 1013(c):

/___/ PERSONAL SERVICE: by delivering a true copy thereof by hand to the person or office, indicated, at the address(es) set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 29, 2008 at Woodland Hills, California.



Kari Kroll

Case Name: Weidler, et. al. v. Circuit City, Inc.
Case Number: BC 369011

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Lead Case No. BC369011

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